



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4719

by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

5 ILCS 140/11

from Ch. 116, par. 211

Amends the Freedom of Information Act. Provides that a public body that willfully and intentionally failed to comply with the Act, or otherwise acted in bad faith, is guilty of a business offense (rather than being subject to a civil penalty) and subject to a fine of not less than \$2,500 nor more than \$5,000 for each occurrence. Provides that an individual acting on behalf of a public body who willfully and intentionally fails to comply with the Act is guilty of a Class B misdemeanor and subject to a term of imprisonment not to exceed 60 days.

LRB098 16391 HEP 51456 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by
5 changing Section 11 as follows:

6 (5 ILCS 140/11) (from Ch. 116, par. 211)

7 Sec. 11. (a) Any person denied access to inspect or copy
8 any public record by a public body may file suit for injunctive
9 or declaratory relief.

10 (b) Where the denial is from a public body of the State,
11 suit may be filed in the circuit court for the county where the
12 public body has its principal office or where the person denied
13 access resides.

14 (c) Where the denial is from a municipality or other public
15 body, except as provided in subsection (b) of this Section,
16 suit may be filed in the circuit court for the county where the
17 public body is located.

18 (d) The circuit court shall have the jurisdiction to enjoin
19 the public body from withholding public records and to order
20 the production of any public records improperly withheld from
21 the person seeking access. If the public body can show that
22 exceptional circumstances exist, and that the body is
23 exercising due diligence in responding to the request, the

1 court may retain jurisdiction and allow the agency additional
2 time to complete its review of the records.

3 (e) On motion of the plaintiff, prior to or after in camera
4 inspection, the court shall order the public body to provide an
5 index of the records to which access has been denied. The index
6 shall include the following:

7 (i) A description of the nature or contents of each
8 document withheld, or each deletion from a released
9 document, provided, however, that the public body shall not
10 be required to disclose the information which it asserts is
11 exempt; and

12 (ii) A statement of the exemption or exemptions claimed
13 for each such deletion or withheld document.

14 (f) In any action considered by the court, the court shall
15 consider the matter de novo, and shall conduct such in camera
16 examination of the requested records as it finds appropriate to
17 determine if such records or any part thereof may be withheld
18 under any provision of this Act. The burden shall be on the
19 public body to establish that its refusal to permit public
20 inspection or copying is in accordance with the provisions of
21 this Act. Any public body that asserts that a record is exempt
22 from disclosure has the burden of proving that it is exempt by
23 clear and convincing evidence.

24 (g) In the event of noncompliance with an order of the
25 court to disclose, the court may enforce its order against any
26 public official or employee so ordered or primarily responsible

1 for such noncompliance through the court's contempt powers.

2 (h) Except as to causes the court considers to be of
3 greater importance, proceedings arising under this Section
4 shall take precedence on the docket over all other causes and
5 be assigned for hearing and trial at the earliest practicable
6 date and expedited in every way.

7 (i) If a person seeking the right to inspect or receive a
8 copy of a public record prevails in a proceeding under this
9 Section, the court shall award such person reasonable
10 attorneys' fees and costs. In determining what amount of
11 attorney's fees is reasonable, the court shall consider the
12 degree to which the relief obtained relates to the relief
13 sought. The changes contained in this subsection apply to an
14 action filed on or after the effective date of this amendatory
15 Act of the 96th General Assembly.

16 (j) A ~~If the court determines that a public body that~~
17 ~~willfully and intentionally failed to comply with this Act, or~~
18 ~~otherwise acted in bad faith, is guilty of a business offense~~
19 ~~and subject to a fine the court shall also impose upon the~~
20 ~~public body a civil penalty~~ of not less than \$2,500 nor more
21 than \$5,000 for each occurrence. An individual acting on behalf
22 of a public body who willfully and intentionally fails to
23 comply with this Act is guilty of a Class B misdemeanor and
24 subject to a term of imprisonment not to exceed 60 days. In
25 assessing the fine ~~civil penalty~~, the court shall consider in
26 aggravation or mitigation the budget of the public body and

1 whether the public body has previously been assessed penalties
2 for violations of this Act. The changes by Public Act 96-542
3 contained in this subsection apply to an action filed on or
4 after January 1, 2010 (the effective date of Public Act 96-542)
5 ~~this amendatory Act of the 96th General Assembly.~~

6 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12.)